

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN MERCHBERGER III,

Defendant.

CR 14-27-M-DLC

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on January 29, 2015. Neither party objected and therefore they are not entitled to *de novo* review of the record. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). This Court will review the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch recommended this Court accept John Merchberger III’s guilty

plea after Merchberger appeared before him pursuant to Federal Rule of Criminal Procedure 11, and entered a plea of guilty to the charge of conspiracy to advertise child pornography in violation of 18 U.S.C. §§ 2251(d)&(e) as set forth in the Indictment. The Defendant admits to the forfeiture allegation.

I find no clear error in Judge Lynch's Findings and Recommendation (Doc. 247), and I adopt them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that John Merchberger III's motion to change plea (Doc. 181) is GRANTED and John Merchberger III is adjudged guilty as charged in the Indictment.

DATED this 13th day of February, 2015.



Dana L. Christensen, Chief District Judge
United States District Court